

HOUSE BILL No. 1041

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.

Synopsis: Caller ID and telecommunications records. Prohibits a person from transmitting false or misleading caller ID information through a caller ID service offered to a subscriber in Indiana. Exempts: (1) the blocking of caller ID information; and (2) lawful investigative activities. Provides that a violation of the prohibition is: (1) a Class B misdemeanor; and (2) a deceptive act actionable by the attorney general. Provides that a subsequent violation is a Class A misdemeanor. Provides a cause of action for: (1) damages; and (2) injunctive relief; for any person aggrieved by a violation. Provides that a person shall not knowingly obtain confidential customer records from a telecommunications service provider through certain false or fraudulent means. Provides that a person shall not knowingly: (1) sell or transfer; (2) purchase, receive, or use; or (3) disclose or allow access to; a provider's confidential customer records without the customer's prior authorization. Exempts: (1) lawful investigative activities; and (2) certain disclosures by a telecommunications service provider. Requires a provider to notify affected customers of any unauthorized acquisition or disclosure of confidential customer records. Provides that a violation of a prohibited act is: (1) a Class B misdemeanor; and (2) a deceptive act actionable by the attorney general. Provides that a subsequent violation is a Class D felony. Provides a cause of action for: (1) damages, for a customer aggrieved by a violation; and (2) injunctive relief, for any person aggrieved by a violation.

Effective: July 1, 2007.

Koch

January 8, 2007, read first time and referred to Committee on Courts and Criminal Code.



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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1041

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 4. (a) A person relying upon an uncured or
4 incurable deceptive act may bring an action for the damages actually
5 suffered as a consumer as a result of the deceptive act or five hundred
6 dollars (\$500), whichever is greater. The court may increase damages
7 for a willful deceptive act in an amount that does not exceed the greater
8 of:

9 (1) three (3) times the actual damages of the consumer suffering
10 the loss; or

11 (2) one thousand dollars (\$1,000).

12 Except as provided in subsection (j), the court may award reasonable
13 attorney fees to the party that prevails in an action under this
14 subsection. This subsection does not apply to a consumer transaction
15 in real property, including a claim or action involving a construction
16 defect (as defined in IC 32-27-3-1(5)) brought against a construction
17 professional (as defined in IC 32-27-3-1(4)), except for purchases of

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time shares and camping club memberships. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, ~~or~~ IC 24-5-14, **IC 24-5-14.5, or IC 24-5-14.6.** Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and
- (4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the

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1 court of appeals may require the plaintiff, defendant, claimant, or any
 2 other party or parties to give security, or additional security, in such
 3 sum as the court shall direct to pay all costs, expenses, and
 4 disbursements that shall be awarded against that party or which that
 5 party may be directed to pay by any interlocutory order by the final
 6 judgment or on appeal.

7 (f) Any person who violates the terms of an injunction issued under
 8 subsection (c) shall forfeit and pay to the state a civil penalty of not
 9 more than fifteen thousand dollars (\$15,000) per violation. For the
 10 purposes of this section, the court issuing an injunction shall retain
 11 jurisdiction, the cause shall be continued, and the attorney general
 12 acting in the name of the state may petition for recovery of civil
 13 penalties. Whenever the court determines that an injunction issued
 14 under subsection (c) has been violated, the court shall award
 15 reasonable costs to the state.

16 (g) If a court finds any person has knowingly violated section 3 or
 17 10 of this chapter, other than section 3(a)(19) of this chapter, the
 18 attorney general, in an action pursuant to subsection (c), may recover
 19 from the person on behalf of the state a civil penalty of a fine not
 20 exceeding five thousand dollars (\$5,000) per violation.

21 (h) If a court finds that a person has violated section 3(a)(19) of this
 22 chapter, the attorney general, in an action under subsection (c), may
 23 recover from the person on behalf of the state a civil penalty as follows:

24 (1) For a knowing or intentional violation, one thousand five
 25 hundred dollars (\$1,500).

26 (2) For a violation other than a knowing or intentional violation,
 27 five hundred dollars (\$500).

28 A civil penalty recovered under this subsection shall be deposited in
 29 the consumer protection division telephone solicitation fund
 30 established by IC 24-4.7-3-6 to be used for the administration and
 31 enforcement of section 3(a)(19) of this chapter.

32 (i) An elderly person relying upon an uncured or incurable
 33 deceptive act, including an act related to hypnotism, may bring an
 34 action to recover treble damages, if appropriate.

35 (j) An offer to cure is:

36 (1) not admissible as evidence in a proceeding initiated under this
 37 section unless the offer to cure is delivered by a supplier to the
 38 consumer or a representative of the consumer before the supplier
 39 files the supplier's initial response to a complaint; and

40 (2) only admissible as evidence in a proceeding initiated under
 41 this section to prove that a supplier is not liable for attorney's fees
 42 under subsection (k).

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If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

SECTION 2. IC 24-5-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14.5. False or Misleading Caller Identification

Sec. 1. This chapter applies to the transmission of information through a caller ID service with respect to calls made after June 30, 2007, to a subscriber.

Sec. 2. As used in this chapter, "caller ID information" means information provided to a subscriber by a caller ID service that identifies:

- (1) the telephone number from which a call is being placed;
- (2) the name of the caller;
- (3) the information described in both subdivisions (1) and (2);
- or
- (4) other information concerning the origination of the call.

Sec. 3. As used in this chapter, "caller ID service" means a service offered by a telecommunications service provider that permits a telecommunications service customer equipped with a display device to view caller ID information before answering the call.

Sec. 4. As used in this chapter, "subscriber" means a telecommunications service customer that subscribes to a caller ID service offered by a telecommunications service provider.

Sec. 5. (a) As used in this chapter, "telecommunications service provider":

- (1) has the meaning set forth in IC 8-1-2.9-0.5; and
- (2) includes an employee, officer, or agent of the telecommunications service provider acting in the course of the person's employment or relationship with the telecommunications service provider.

(b) The term includes a person that offers any of the following:

- (1) Voice over Internet Protocol (VOIP).
- (2) Voice over power lines.

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(3) Any form of wireless telephone service, including the following:

- (A) Cellular telephone service.
- (B) Broadband personal communications service.
- (C) Covered specialized mobile radio service.
- (D) Any successor technology, including next generation or third generation service.

Sec. 6. Except as provided in section 7 of this chapter, a person shall not knowingly cause false or misleading caller ID information to be transmitted through a caller ID service offered to a subscriber in Indiana.

Sec. 7. Subject to IC 24-5-12-25, this chapter does not prohibit or restrict:

- (1) blocking the capability of a caller ID service to transmit caller ID information;
- (2) any lawfully authorized investigative, protective, or intelligence activity of:
 - (A) the United States;
 - (B) the state or a political subdivision of the state; or
 - (C) any other state or a political subdivision of that state;
- (3) any other lawful action of:
 - (A) a law enforcement agency; or
 - (B) any officer, employee, or agent of a law enforcement agency;
 in connection with the performance of the official duties of the agency; or
- (4) any action permitted by federal law or regulation.

Sec. 8. A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this chapter.

Sec. 9. A person who violates this chapter commits a deceptive act that is:

- (1) actionable by the attorney general under IC 24-5-0.5-4(c); and
- (2) subject to the penalties set forth in IC 24-5-0.5.

An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 10. (a) Except as provided in section 11 of this chapter, any person who is aggrieved by a violation of this chapter may bring an action for the recovery of the person's actual damages, including court costs and attorney's fees, against any person:

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(1) responsible for; or
 (2) who knowingly participated in;
 the violation. An action under this subsection may be brought in the circuit or superior court of the aggrieved person's county of residence or principal place of business in Indiana.

(b) Upon petition by any person that another person has violated this chapter, the circuit or superior court of the petitioner's county of residence or principal place of business in Indiana may enjoin the respondent from further violations. The injunctive relief available under this subsection is in addition to any damages to which a person may be entitled under subsection (a).

Sec. 11. A person does not have a cause of action against a telecommunications service provider for a violation of this chapter unless the violation resulted from the telecommunications service provider's gross negligence or intentional wrongdoing.

SECTION 3. IC 24-5-14.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14.6. Customer Records of Telecommunications Service Providers

Sec. 1. (a) As used in this section, "confidential customer records" refers to any of the following:

(1) Information that:

- (A) relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by a customer of a telecommunications service provider; and**
- (B) is made available to the telecommunications service provider by the customer solely by virtue of the relationship between the customer and telecommunications service provider.**

(2) Information contained in any:

- (A) bill;**
- (B) itemization; or**
- (C) account statement;**

issued to a customer by a telecommunications service provider for telecommunications service offered by the provider and subscribed to by the customer.

(b) The term does not include:

- (1) information collected for or on behalf of customers subscribing to caller ID service (as defined in IC 24-5-14.5-3)**

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or other similar technologies;

(2) collective data:

(A) that:

(i) is maintained by a telecommunications service provider; and

(ii) relates to a group or category of services or customers; and

(B) from which individual customer identities and characteristics have been removed; or

(3) subscriber list information (as defined in 47 U.S.C. 222(h)(3)).

Sec. 2. (a) As used in this chapter, "telecommunications service provider":

(1) has the meaning set forth in IC 8-1-2.9-0.5; and

(2) includes an employee, officer, or agent of the telecommunications service provider acting in the course of the person's employment or relationship with the telecommunications service provider.

(b) The term includes a person that offers any of the following:

(1) Voice over Internet Protocol (VOIP).

(2) Voice over power lines.

(3) Any form of wireless telephone service, including the following:

(A) Cellular telephone service.

(B) Broadband personal communications service.

(C) Covered specialized mobile radio service.

(D) Any successor technology, including next generation or third generation service.

Sec. 3. Except as provided in section 7 of this chapter, a person shall not knowingly obtain, or attempt or conspire to obtain, confidential customer records from a telecommunications service provider by doing any of the following:

(1) Making false or fraudulent statements or representations to a telecommunications service provider.

(2) Making false or fraudulent statements or representations to a customer of a telecommunications service provider.

(3) Providing, through any means, including the Internet, a document or other information to a telecommunications service provider if the person knows that the document or other information:

(A) is forged, counterfeit, lost, or stolen;

(B) was obtained fraudulently or without the customer's

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- 1 consent; or
 2 (C) contains a false or fraudulent statement or
 3 representation.
 4 (4) Accessing one (1) or more customer accounts of a
 5 telecommunications service provider:
 6 (A) through the Internet without the customer's prior
 7 authorization; or
 8 (B) by:
 9 (i) accessing without authorization; or
 10 (ii) exceeding the person's authorized access to;
 11 a computer data base maintained by the
 12 telecommunications service provider.
 13 Sec. 4. Except as provided in section 7 of this chapter, a person
 14 shall not knowingly sell or transfer, or attempt or conspire to sell
 15 or transfer, confidential customer records of a telecommunications
 16 service provider without the prior authorization of the customer to
 17 whom the records pertain.
 18 Sec. 5. Except as provided in section 7 of this chapter, a person
 19 shall not knowingly:
 20 (1) purchase, receive, or use; or
 21 (2) attempt or conspire to purchase, receive, or use;
 22 confidential customer records of a telecommunications service
 23 provider without the prior authorization of the customer to whom
 24 the records pertain.
 25 Sec. 6. Except as provided in section 7 of this chapter, a person
 26 shall not knowingly:
 27 (1) disclose or allow access to; or
 28 (2) attempt or conspire to:
 29 (A) disclose; or
 30 (B) allow access to;
 31 confidential customer records of a telecommunications service
 32 provider without the prior authorization of the customer to whom
 33 the records pertain.
 34 Sec. 7. (a) This chapter does not prohibit or restrict:
 35 (1) any lawfully authorized investigative, protective, or
 36 intelligence activity of:
 37 (A) the United States;
 38 (B) the state or a political subdivision of the state; or
 39 (C) any other state or a political subdivision of that state;
 40 or
 41 (2) any other lawful action of:
 42 (A) a law enforcement agency; or

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(B) any officer, employee, or agent of a law enforcement agency;
in connection with the performance of the official duties of the agency.

(b) Section 6 of this chapter does not apply to a telecommunications service provider that discloses or allows access to confidential customer records of the telecommunications service provider:

(1) in response to a lawful request from:

(A) a unit of government described in subsection (a)(1); or

(B) a law enforcement agency;

(2) in compliance with a state or federal law or a court order;

(3) to another telecommunications service provider to the extent necessary to provide telecommunications service between or within service areas; or

(4) to a communications service provider (as defined in IC 8-1-32.5-4) that provides communications service (as defined in IC 8-1-32.5-3) to a customer of the telecommunications service provider over the lines or other infrastructure of the telecommunications service provider, to the extent necessary for the communications service provider to provide the communications service subscribed to by the customer.

(c) Notwithstanding sections 5 and 6 of this chapter, a telecommunications service provider may use, disclose, or permit access to confidential customer records of the telecommunications service provider:

(1) for any of the purposes set forth in 47 U.S.C. 222(d); or

(2) to the extent necessary to:

(A) test the security procedures or systems of the telecommunications service provider for maintaining the confidentiality of customer records and information; or

(B) investigate an allegation of misconduct or negligence on the part of an employee, officer, or agent of the telecommunications service provider.

Sec. 8. (a) This section applies to a violation of this chapter that occurs after June 30, 2007.

(b) Except as provided in subsections (c), (h), and (i), this section applies to a telecommunications service provider that discovers or is notified that confidential customer records of the telecommunications service provider have been or may have been:

(1) disclosed to; or

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(2) acquired by;
 an unauthorized person in violation of this chapter. A telecommunications service provider to whom this section applies shall notify each Indiana customer whose confidential customer records were or may have been disclosed or acquired in violation of this chapter.

(c) This subsection applies to:

(1) a third party; or
 (2) an affiliate of a telecommunications service provider; that maintains or administers confidential customer records on behalf of the telecommunications service provider. If a third party or an affiliate described in this subsection discovers or is notified of a violation described in subsection (b), the third party or affiliate shall immediately notify the telecommunications service provider of the violation, subject to subsection (d).

(d) A person required by this section to provide notice of a violation of this chapter shall provide the notice:

(1) without unreasonable delay; and

(2) consistent with:

(A) the legitimate needs of law enforcement or the attorney general, as described in subsection (e); and

(B) any measures necessary to:

(i) determine the scope of the violation; and

(ii) restore the reasonable integrity of the confidential customer records of the telecommunications service provider.

(e) A notice required under this section:

(1) may be delayed if a law enforcement agency or the attorney general determines that the notice will impede a criminal or civil investigation of the violation of this chapter; and

(2) shall be made immediately after the law enforcement agency or the attorney general determines that the notice will not compromise the investigation.

(f) Except as provided in subsections (g) and (h), a telecommunications service provider shall provide any notice required under this section to an affected Indiana customer:

(1) by United States mail; or

(2) by electronic mail, if the customer has provided the telecommunications service provider with the customer's electronic mail address.

(g) If a telecommunications service provider is required to

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1 provide notice under this section to more than five hundred
 2 thousand (500,000) Indiana customers, or if the
 3 telecommunications service provider determines that the cost of
 4 the notice to all affected Indiana customers will be more than two
 5 hundred fifty thousand dollars (\$250,000), the telecommunications
 6 service provider may elect to provide the notice by using both of
 7 the following methods:

8 (1) Conspicuous posting of the notice on the web site of the
 9 telecommunications service provider, if the
 10 telecommunications service provider maintains a web site.

11 (2) Notice to major news reporting media in the geographic
 12 area in which Indiana customers affected by the violation
 13 reside.

14 (h) A telecommunications service provider that maintains its
 15 own customer notification procedures as part of an information
 16 privacy policy or a security policy is not required to provide
 17 separate notice under this section if the telecommunications service
 18 provider's information privacy policy or security policy is at least
 19 as stringent as the notice requirements described in this section.

20 (i) If a violation described in subsection (b) involves the
 21 unauthorized acquisition or disclosure of confidential customer
 22 records that include any personal information (as defined in
 23 IC 24-4.9-2-10) of the affected Indiana customers:

24 (1) the telecommunications service provider; and

25 (2) any person described in subsection (c), if applicable;

26 shall provide notice in accordance with IC 24-4.9 instead of this
 27 section.

28 (j) A person that:

29 (1) is required to give notice under subsection (b) or (c); and

30 (2) fails:

31 (A) to give the required notice; or

32 (B) to give the notice in accordance with this section;

33 commits a deceptive act that is actionable only by the attorney
 34 general under this subsection. However, a failure to provide any
 35 required notice in connection with a related series of violations of
 36 this chapter constitutes one (1) deceptive act for purposes of this
 37 subsection. The attorney general may bring an action to obtain any
 38 remedy available under IC 24-4.9-4-2 for the breach of the security
 39 of a data system.

40 Sec. 9. (a) Subject to subsection (c), this section applies to a
 41 violation of this chapter, other than section 8 of this chapter, that
 42 occurs after June 30, 2007.

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(b) A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous unrelated conviction under this chapter.

(c) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter may be prosecuted under this section.

Sec. 10. (a) Subject to subsection (c), this section applies to a violation of this chapter, other than section 8 of this chapter, that occurs after June 30, 2007.

(b) A person who violates this chapter commits a deceptive act that is:

(1) actionable by the attorney general under IC 24-5-0.5-4(c); and

(2) subject to the penalties set forth in IC 24-5-0.5.

An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

(c) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter is a deceptive act subject to IC 24-5-0.5.

Sec. 11. (a) Subject to subsection (e), this section applies to a violation of this chapter, other than section 8 of this chapter, that occurs after June 30, 2007.

(b) As used in this section, "customer" refers to a customer of a telecommunications service provider.

(c) Except as provided in section 12 of this chapter, a customer who is aggrieved by a violation of this chapter may bring an action for the recovery of the customer's actual damages, including court costs and attorney's fees, against any person:

(1) responsible for; or

(2) who knowingly participated in;

the violation. An action under this subsection may be brought in the circuit or superior court of the county of residence of the customer.

(d) Upon petition by any person that another person has

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1 violated this chapter, the circuit or superior court of the
 2 petitioner's county of residence or principal place of business in
 3 Indiana may enjoin the respondent from further violations. The
 4 injunctive relief available under this subsection is in addition to
 5 any damages to which a customer may be entitled under subsection
 6 (c).

7 (e) If a violation of section 4, 5, or 6 of this chapter:

8 (1) occurs after June 30, 2007; and

9 (2) involves the sale, transfer, purchase, receipt, use, or
 10 disclosure of confidential customer records obtained in
 11 violation of section 3 of this chapter before July 1, 2007;

12 only the violation of section 4, 5, or 6 of this chapter is actionable
 13 by a customer or another person under this section.

14 Sec. 12. A customer does not have a cause of action against a
 15 telecommunications service provider for a violation of this chapter
 16 unless the violation resulted from the telecommunications service
 17 provider's gross negligence or intentional wrongdoing.

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